

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
IN ADMIRALTY
WEST PALM DIVISION

PROVIDENT BANK

Plaintiff,

v.

DONALD W. MILLER

Defendant.

CASE NO:

COMPLAINT

COMES NOW, PROVIDENT BANK ("PROVIDENT"), by and through its undersigned Counsel, and files this, its Complaint against DONALD W. MILLER ("MILLER) and would allege as follows:

PARTIES JURISDICTION AND VENUE

1. This is admiralty and maritime action within the meaning of Rule 9(h). This Court has subject matter jurisdiction pursuant to 46 U.S.C. §31325, the Ship Mortgage Act.
2. Plaintiff PROVIDENT BANK is a New Jersey Corporation with its principal business address at 10 Woodbridge Center Drive, Woodbridge, New Jersey 07095.
3. Defendant MILLER is a resident of Palm Beach County, Florida, residing at 2347 Prosperity Bay Court, Palm Beach Gardens, Florida 33410.
4. Venue is proper where Defendant MILLER resides in Palm Beach County, Florida.

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GENERAL ALLEGATIONS

5. On or about December 2, 2005, Sovereign Holdings, LLC. (a single member LLC owned by MILLER) entered into a New Jersey Promissory Note and Security Agreement with Elite Financial Group, Inc. for the principal amount of \$152,500.00, with interest at the rate of 6.9 percent per annum for a period of 240 months. A true and correct copy of the Promissory Note and Security Agreement ("Note") is attached hereto as **EXHIBIT "A."**

6. As further security for the monies advanced pursuant to the Note, Sovereign Holdings, LLC granted PROVIDENT BANK a mortgage on the *M/Y Legal Ease*, a 2005 Adventure Motor Yacht, USCG Official Number 1175776, Hull Identification Number VNM00315E505 ("Vessel"). A true and correct copy of the "Mortgage" is attached hereto as **EXHIBIT "B."**

7. The Mortgage was duly and validly recorded with the United States Coast Guard National Vessel Documentation Center on April 10, 2006 at 1:18P.M. at Batch Number 478867 and Doc. ID: 5227087.

8. As further security for the monies advanced pursuant to the Note, on or about December 2, 2005, MILLER executed an unlimited Guaranty. A true and correct copy is attached hereto as **EXHIBIT "C."**

9. The Note and Security Agreement and Guaranty were assigned to the PROVIDENT BANK on December 2, 2005. A copy of the assignment is attached hereto as **EXHIBIT "D."**

10. In approximately June, 2020, the loan went into default where payments were not made pursuant to the terms of the Note Mortgage and Guaranty. Thereafter, PROVIDENT took possession of the Vessel in early September, 2021.

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11. On or about September 8, 2021, PROVIDENT sent a copy of its Notice of Intent to Sell the Vessel to Sovereign Holdings, LLC. and MILLER. A true and correct copy of the Notice is attached hereto as **EXHIBIT "E."**

12. The Vessel was marketed by National Liquidators, and sold at a private sale on October 18, 2021 for a gross amount of \$70,800.00. Taking into account commission, repossession charges, storage and other charges attendant to the sale of the Vessel, the net sales proceeds were \$59,685.00. A copy of a Post Sale Notice is attached hereto as **EXHIBIT "F."**¹

13. Taking into account the credit of the proceeds of the sale from the Vessel, as of October 31, 2022, MILLER owes \$46,628.54 with per diem interest thereafter in the amount of \$7.18 each day.

14. PROVIDENT BANK has retained undersigned Counsel and is entitled to the recovery of its reasonable attorney's fees from MILLER.

15. PROVIDENT BANK has satisfied all conditions precedent to bringing the instant lawsuit.

COUNT I: BREACH OF GUARANTY

16. PROVIDENT BANK realleges and re-avers the allegations contained in paragraphs 1-15 above as if fully set forth herein.

17. MILLER breached the note, mortgage and guaranty by failing to make installment payments when due.

¹ The Post Sale Notice includes \$1,552.50 in attorney's fees which has been removed from the principal amount owing herein and instead will be sought as attorney's fees post judgment.

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18. As a result, PROVIDENT BANK exercised its right to repossess and sell the Vessel as reflected in the Notice of Plan to Sell Property and Post Sale Notice attached hereto.

19. At all times material hereto, PROVIDENT BANK and its agents marketed and sold the Vessel in a commercially reasonable standard.

20. After the sale of the Vessel there remained a deficiency balance owed. MILLER had a contractual obligation to pay the deficiency balance owed after the sale of by virtue of the Guaranty.

21. Despite Plaintiff's demands, MILLER breached his contractual duty by failing to pay the deficiency balance owed.

22. As a result of MILLER's breach, PROVIDENT BANK has suffered damages. As of October 31, 2022, MILLER owes \$46,628.54 with per diem interest thereafter in the amount of \$7.18.

23. PROVIDENT BANK has been required to retain undersigned counsel to prosecute this action. PROVIDENT BANK is entitled to its reasonable attorney's fees and costs pursuant to the terms of the Note, Mortgage and Guaranty.

WHEREFORE, PROVIDENT BANK demands judgment against MILLER (as of October 31, 2022) in the amount of \$46,628.54 with per diem interest thereafter in the amount of \$7.18, plus costs, reasonable attorney's fees and post judgment interest.

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Respectfully submitted,

/s/ Adam B. Cooke

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